

Opinion No. 73-35

April 9, 1973

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: The Honorable Betty Fiorina Secretary of State State of New Mexico Legislative-Executive Building Santa Fe, New Mexico 87501

QUESTIONS

BACKGROUND

Citizens in Roosevelt County registered to vote and did vote in the 1972 General Election. However when such persons registered they were told to use their post office box numbers as addresses rather than a street address. After the registration books were closed for an upcoming municipal election a question was raised as to whether anyone not showing a **street address** within the municipality should be allowed to vote in the municipal election.

QUESTIONS

Can a voter who registered to vote and gave a post office box number, and was allowed to vote at the 1972 General Election, vote at an election to be held prior to the time he re-registers giving a home address?

CONCLUSION

Yes, see analysis.

OPINION

{*71} ANALYSIS

In the normal course of voter registration, one must meet the criteria of a "qualified elector" in order to register to vote. Section 3-4-2, N.M.S.A., 1953 Comp. Included among these criteria are the following elements of information: name, sex, residence, municipality, post office, zip code, county, New Mexico county of former registration, social security number, date of birth, place of birth, political party affiliation and statement of qualification for voting. Section 3-4-18(B), N.M.S.A., 1953 Comp.

Once a "qualified elector" registers and becomes a voter such registration "is permanent **for all purposes** during the life of such person and until his affidavit of registration is cancelled for any cause **specified in the Election Code.**" (Emphasis added) Section 3-4-3, N.M.S.A., 1953 Comp. The causes specified in the Code are: (1) where a petition is filed with the District Court pursuant to Section 3-4-20 wherein it is alleged that certain

persons registered and named in the petition are not qualified electors in the precinct; (2) where the Board of Registration suspends or cancels affidavits of registration because of the death of the voter, legal insanity of the voter, felony conviction of the voter or certain failure of the voter to vote. Section 3-4-22, N.M.S.A., 1953 Comp. Without cancellation of the elector's registration, the elector is deemed registered and qualified to vote.

In the present fact situation it appears that the voters have not had their affidavits of registration cancelled or suspended by either the District Court or the Board of Registration. Thus, the voters are still qualified electors. Section 14-1-2(K), N.M.S.A., 1953 Comp. defines a "qualified elector" in a municipal election as "any person who is registered to vote in a general election precinct established by the board of county commissioners, which is within or partly within the municipality, and who has resided within the municipality for thirty [30] days preceding a municipal election." Because the municipal clerk must determine who resides in the municipality when she obtains the original affidavits from the county clerk prior to a municipal election, Section 14-8-5, N.M.S.A., 1953 Comp., it is reasonable to assume that where **only** a post office box number was given as an address, the clerk may determine that the elector does not live within an election precinct or voting division located wholly or partially within the municipality. However, because the affidavit of registration includes information as to the municipality in which the elector resides, it is our opinion that where such information is available and indicates that the elector **resides** in the municipality the municipal clerk must allow that voter to participate in a municipal election.

We wish to make it clear that this opinion is dependent on the particular factual situation presented here. For normally a post office box number is not considered an address for registration purposes. However, since the electors have relied on representations made prior to the general election and were allowed to vote in the general election we are of the opinion that it would be inequitable to deny them the right to vote at this time. This opinion is further supported by the fact that the decision to disenfranchise persons registered with a post office box was not made until after the books were closed, thus eliminating the opportunity for these persons to correct the information on the affidavits of registration.

The Municipal Code provides that election officials conduct the municipal election in the manner provided by law for the conduct of general elections. Section 14-8-10(C), N.M.S.A., 1953 Comp. Thus the presiding judge and the { *72 } election judges shall, where challenges occur, see Section 3-12-37, N.M.S.A., 1953 Comp., determine whether or not the individual actually **resides** in the municipality. If a determination of residency is made, such elector shall be allowed to vote in the municipal election.

By: Leila Andrews

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